

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.371 of 2009

Chinnapaiyan

... Appellant

vs.

State rep. by
The Inspector of Police,
Krishnagiri Taluk Police Station,
Krishnagiri District.
(Crime No.461 of 2007)

... Respondent

Criminal Appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 23.06.2009 passed by the learned
Principal Sessions Judge/Special Judge under the SC/ST Act,1989,
Krishnagiri, in S.C.No.274 of 2007.

For Appellant : Mr.V.Rajamohan

For Respondent : Mr.K.Madhan
Government Advocate(Crl. Side)

JUDGMENT

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The sole accused in Sessions Case No.274 of 2007 on the
file of the learned Principal Sessions Judge/Special Judge under SC
and St (PA) Act, 1989, Krishnagiri, is appellant herein. He stood
charged for the offences under Sections 294(b) and 506(ii) IPC and
Sections 3(1)(xi) and 3(1)(x) of SC/ST (PA) Act, 1989. The Trial

Court, after trial, by Judgment dated 23.06.2009, convicted the accused under Section 294(b) IPC and sentenced him to undergo three months rigorous imprisonment and convicted him under Section 3(1)(xi) of SC/ST(PA) Act,1989 and sentenced him to undergo one year rigorous imprisonment and imposed a fine of Rs.500/- in default to undergo rigorous imprisonment for one month. The appellant was however, acquitted from the charges levelled under Section 506(ii) IPC and Section 3(1)(x) of SC/ST(PA) Act,1989. The above sentences were ordered to run concurrently. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:

(i) P.W.1 is the victim in this case. On 06.06.2007 at about 12.30 p.m., while she was walking on the agricultural field owned by one Rajan, the accused who came behind her, molested her by pulling and placing his hand over her breast. He scolded her in a filthy language. When PW1 tried to escape from the clutches of the accused, he abused her by reposing to her caste name, he abused and also threatened her with dire consequences. Some how she had managed to escape from the scene of occurrence. Thereafter, she informed the same to her husband-P.W.2 over phone. After

to the police station, where P.W.1 made a complaint before the respondent police.

(ii) P.W.9, the Inspector of Police, working in the respondent police station, on receipt of the complaint from P.W.1, registered the case in Crime No.461 of 2007 for the offences under Sections 294(b), 354, 506(ii) IPC and Section 3(1)(x) of SC/ST Act, prepared first information report [Ex.P6] and sent the same to the Judicial Magistrate Court concerned and also formulated a copy of the same to the Deputy Superintendent of Police.

(iii) P.W.10, the Deputy Superintendent of Police, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar[Ex.P9], rough sketch[Ex.P8] in the presence of witnesses. He examined PW1 and few more witnesses and recorded their statements. He, thereafter arrested the accused and forwarded him to the court for judicial remand. Thereafter, he obtained the community certificates from the Tahsildar concerned relating to both the accused as well as P.W.1. He examined the Tahsildar and other witnesses and recorded their statements and after having obtained opinion from the Public prosecutor, he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above, and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 10 witnesses and exhibited 9 documents. No material objects were marked.

4. Out of the witnesses examined, P.W.1 is victim in this case. P.W.2 is the husband of P.W.1. P.W.3 is the grand father of P.W.1. According to P.W.1, after the occurrence, she informed the same to P.W.3, who only asked her to make a complaint to the police. P.W.4 is the Aunt of P.W.1. She along with others save complaint to the respondent police station. P.W.5 is an attesting witness to the observation mahazar. P.W.6 turned hostile. P.W.7 is the Tahsildar, Krishnagiri Taluk, who issued community certificate to the effect that the PW1 belongs to Schedule Castes. P.W.8 is another Tahsildar, who issued community certificate to the effect that the accused belongs to Backward Class community. P.W.9 was the Inspector of Police at Krishnagiri Taluk Police Station. He has stated that on receipt of the complaint, he registered a case, prepared first information report and sent the original complaint and FIR to the Judicial Magistrate Court and submitted the copies to P.W.10, the Deputy Superintendent of Police, Krishnagiri for investigation. According to P.W.10, on receipt of the first

information report, he took up case for investigation visited the place of occurrence, prepared prepared observation mahazar, rough sketch, arrested the accused and forwarded him to the Court for judicial remand. Thereafter, he obtained commonly certificates from the revenue authorities and after completing the investigation, he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witness on his side nor did he mark any document.

6. Having considered all the above, the Trial Court convicted and sentenced the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court with the present appeal.

7. I have heard Mr.V.Rajamohan, learned counsel appearing for the appellant and Mr.K.Madhan, learned Government Advocate(Crl. Side) appearing for the State and I have perused the materials available on record.

8. The occurrence said to have taken place on 06.06.2007 at about 12.30 p.m. According to P.W.1, after the occurrence, she informed the same to the brother of accused. Thereafter, she informed the same to grand father (P.W.3) and her husband (P.W.2). P.W.2 is working as tempo driver in Krishnagiri and after hearing the news, he came to the village on the same day night itself. But, no complaint was made immediately. The complaint was made only on 08.06.2007 at about 9.00 p.m., that is after the delay of more than two days. There is no plausible explanation for the same. The learned counsel appearing for the appellant would submit that on 07.06.2007 at about 8.30 p.m., there was a quarrel between the appellant and accused, P.W.2 and others, in which, P.W.2 and others attacked the accused and the accused had made a complaint before the respondent police and the respondent police in turn, registered a case in Crime No.462 of 2007 and P.W.9, the Inspector of Police also admitted the same in his cross examinations. Therefore, according to the learned Counsel, in order to wreck vengeance the present complaint has been filed belatedly on 08.06.2007 at about 9.00 p.m., I find every force in the argument of the learned counsel appearing for the appellant. From the evidence of P.W.9, the Inspector of Police, wherein during his cross examination he has admitted that the accused has given complaint on 07.06.2007 and the same was registered in Crime

No.462 of 2007 and the accused was admitted in the hospital on 07.06.2007. The prosecution has not chosen to mark the complaint which was the basis for rejecting the other case, the delay in giving the complaint by P.W.1. It is settled position of law that the motive is a double edged weapon it may be the cause of a crime as well as the reason for false implications or false complaint. P.W.10 at the threshold closed the case which was registered on the complaint made by the accused. The prosecution has buried the ordinal piece of evidence relating to the alleged notice. Had it been properly investigated, truth would have come to light. The prosecution has miserably failed to explain as to why both the cases have not been investigated by the one and the officer. Furthermore, the Trial Court disbelieved a portion of evidence of PW1 with regard to the alleged criminal intimidation and verbal assent with reference to her caste and acquitted the appellant from the charges. Apart from the above, P.Ws.2 to 4 are closely related to P.W.1 and there is no independent witness to corroborate the evidence of P.W.1 in respect of material particulars. The delay in lodging the complaint against the accused to create doubt in the case of the prosecution. In the light of the above facts and circumstances, it is highly unsafe to convict the accused based on uncorroborated testimony P.W.1, the appellant is thus entitled for acquittal.

9. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant in S.C.No.274 of 2007 dated 23.06.2009 on the file of the learned Principal Sessions Judge/Special Judge under SC/ST(PA) Act,1989, Krishnagiri is set aside and the appellant/accused is acquitted of all the charges levelled against him and bail bond, if any, executed by him shall stand cancelled. Fine amount if any, paid by him refunded forthwith.

03.02.2017

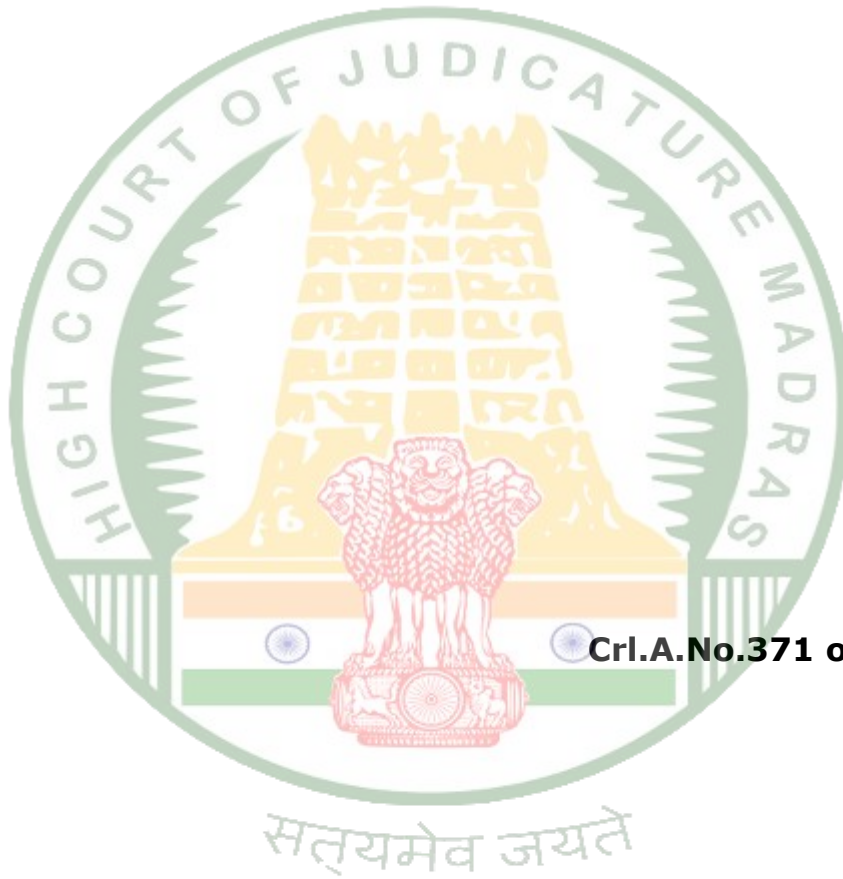
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To

- 1.The Principal Sessions Judge,
Krishnagiri.
- 2.The Inspector of Police,
Krishnagiri Taluk Police Station,
Krishnagiri.
- 3.The Public Prosecutor,
High Court, Madras.

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V.BHARATHIDASAN.J.,

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